IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

WP(C).No. 15578 of 2005(D)

PETITIONER:

M/S.ANUGRAMA ENGINEERS AND CONTRACTORS
(P)LTD, NO.18, TRUST SQUARE STREET, RAMALINGAPURAM
CHENNAI 600 012, A PRIVATE LIMITED COMPANY,
REPREENTED BY ITS MANAGING DIRECTOR,
R.SHANMUGHA VADIVEL.

BY ADV. SRI.D.KRISHNA PRASAD
SRI.D.NARENDRANATH
SRI.M.HARISHARMA
SRI.T.P.ELDHOSE

RESPONDENTS:

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1. STATE OF KERALA,R EPRESENTED BY ITS
CHEIF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE KERALA STATE CONSTRUCTION
CORPORATION LTD., P.O.BOX NO. 1944, CARMEL CENTRE,
III FLOOR, BANERJI ROAD, KOCHI 28.

BY ADV. SRI.M.V.THAMBAN, SC., KSCC LTD.
GOVT.PLEADER SMT. SMITHA SUKUMARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Petitioner's Exhibits

Ext.P1 : True copy of the minutes held on 22-5-2003 at the Chamber of the Managing Director of the 2nd respondent

Ext.P2: True copy of request dated 25-6-2004 made by the petitioner to the 2nd respondent

Ext.P3: True copy of request dated 14-8-2004 made by the petitioner to the 2nd respondent

Ext.P4: True copy of request dated 24-8-2004 made by the petitioner to the 2nd respondent

Ext.P5. True copy of request dated 9-10-2004 made by the petitioner to the 2nd respondent

Ext.P6. True copy of request dated 23-11-2004 made by the petitioner to the 2nd respondent

Ext.P7. True copy of request dated 18-12-2004 made by the petitioner to the 2nd respondent

Ext.P8. True copy of request dated 12-2-2005 made by the petitioner to the 2nd respondent

Ext.P9: True copy of minutes of the meeting held on 22-5-2003 by the 2nd respondent

Ext.P10. True copy of closure agreement No.1/CC/GM/RDB/N-K dated 28-7-2003 executed by the 2nd respondent and the petitioner

Ext.P11: True copy of the statement prepared by the 2nd respondent

Ext.P12: True copy of report dated 18-8-2003 of the 2nd respondent

Respondent's Exhibits

Ext.R2(a) : True copy of the report dated 5-11-2005.

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K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 15578 OF 2005-D

JUDGMENT

The petitioner was a sub-contractor of the 2nd respondent Kerala State Construction Corporation Limited. The said Corporation awarded the work of construction of railway over-bridge at Neeleshwar in Kasaragod, to the petitioner. The agreement was executed on 7.1.2002. The time for completion of the work was fixed as 10 months from the work order dated 12.12.2001. The said period was further extended up to 30.6.2003. The petitioner could complete only 40% of the work. The parties, that is, the petitioner and the 2nd respondent on 22.5.2003 decided to execute a closure agreement, relieving the petitioner from the liability of risk and cost. It was also agreed to pay for the work it has done and also to pay for the materials stacked by it at the site. Thereafter Ext.P10 closure agreement was also executed in terms of Ext.P1 understanding between the parties. But, when the 2nd respondent did not pay the amount due to it, the petitioner after filing representations before the said respondent, has filed this Writ Petition, seeking appropriate reliefs.

2. The 2nd respondent has filed a counter affidavit, wherein it is

admitted that going by Exts.P1 and P10, an amount of Rs.7,79,641/- is due to the petitioner. But, on re-arranging the work, the Corporation suffered a loss of Rs.43 lakhs. Therefore, no amount could be released to it. This is the stand taken in the counter affidavit. The Corporation has also raised a technical contention that this writ petition is not maintainable, as the amount payable by the petitioner is disputed. According to the Corporation, it is also not a statutory contract. The petitioner has filed a reply affidavit, contesting the stand of the 2nd respondent.

3. Heard the learned counsel on both sides. Going by Exts.P1 and P10, the petitioner is entitled to get the amount assessed to be due to him by the 2nd respondent. The same cannot be withheld for the reason that the 2nd respondent has suffered loss, when the work was re-arranged through another contractor. The petitioner was relieved from the work without the liability of risk and cost. Therefore, the contention of the Corporation that it cannot pay the amount due to the petitioner, as it suffered some loss, cannot be upheld. The technical contention raised by the Corporation is also equally untenable, especially, in view of the recent decision of the Division Bench of this Court in **Grace Joseph v. State of Kerala** (I.L.R. 2006(3) Kerala 198). Going by Exts.P1 and P10, admittedly, the petitioner is entitled to get the balance amount of Rs.7,79,641/-. So, no disputed facts

remain to be tried by a civil court. Accordingly, the 2nd respondent is directed to pay the balance amount due to the petitioner. If, after the filing of the counter affidavit, no amount has been released, it shall be paid Rs.7,79,641/-. If any amount has been paid subsequently, needless to say, the same can be deducted.

The Writ Petition is disposed of as above.

18th January, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/